

**LIMITED SOURCE DETERMINATION FORM
FOR PROFESSIONAL SERVICES**



TO: Michael Green, CPM
Central Services Administrator

FROM: City Attorney's Office
Judi Morgan, Ext. 8779

City Attorney, Andrew B. Ching

SUBJECT: Limited Source Determination for Professional Services

As City Attorney for which office the professional service(s) will be contracted, I have conducted a good faith review of available sources and determined that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise impair the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public; or only one provider has the experience and capability to successfully perform the contract; or the need was not known in sufficient time to allow for competitive procurement and time is of the essence. Substantiating information is provided herein.

Relating to this procurement, no conflicts of interest, legal, ethical or preference issues exist that would compromise my department or this procurement.

Andrew B. Ching
Department Director Signature

4-27-2018
Date

Name of Limited Source Provider: West, A Thomson Reuters business
Mailing Address: PO Box 6187, Carol Stream, IL 60197
Phone Number: 602.222.9292
Fax Number: 866.422.4776

Identity and Description of Professional Services for Limited Source Procurement:

The Westlaw Subscriber Agreement will provide on-line legal research services for the City Attorney's Office for the next five years at a guaranteed monthly fixed rate for unlimited users. Services include access to federal and state case law, statutes and citation checking, as well as access to secondary materials and regulations.

Limited Source Considerations:

Additional sources proffering on-line legal research were reviewed, including LexisNexis, Fast Case, LoisLaw and Versus. None but LexisNexis and Westlaw offered a citation checking feature to determine whether cases had recently been overruled or distinguished, current within the previous forty-eight hours. For this reason, all but LexisNexis and Westlaw failed to meet minimum qualifications. Between LexisNexis and Westlaw, Westlaw provided full access to the case law, statutes, treatises and regulations necessary for municipal law practice. LexisNexis offered a similar product but was more costly overall and would only agree to a contract term of three years, rather than five years offered by Westlaw. Changing to LexisNexis would require extensive training and would result in additional time and financial draw to the City Attorney's Office. The contract was awarded to West after conducting a good faith review of available sources, and determining that Westlaw is the best reasonable and practicable source for these necessary services.

Firm Price Quotation Attached from Limited Source Provider:

See attached Special Offer Amendment to Westlaw Subscriber Agreement.

City of Tempe Code §26A-9 Contracting for Professional Services.

(a) A contract for professional services may be awarded by means of competitive sealed proposals, by an invitation for bids or by limited source selection if the manager of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise impair the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public; or if only one provider has the experience and capability to successfully perform the contract; or if the need was not known in sufficient time to allow for competitive procurement and time is of the essence. The manager of the department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the procurement office for review.

(b) Unless the manager of the department makes a limited source determination, the Procurement Office shall issue competitive solicitations for professional services.

(c) Professional and personal service contracts requiring formal City Council approvals shall be reviewed by the City's Risk Management Division and City Attorney's Office before signing.

(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07)

**SPECIAL OFFER AMENDMENT
TO WESTLAW® SUBSCRIBER AGREEMENT**

Special Offer Amendment to Westlaw Subscriber Agreement between City of Tempe - Office of the City Attorney ("Subscriber") and West, a Thomson Reuters business ("West") as follows:

1. **Effect of Amendment.** The underlying Westlaw Subscriber Agreement, including all schedules thereto ("Subscriber Agreement"), between Subscriber and West is amended as specifically set forth herein to incorporate the terms of this Amendment. As amended, the Subscriber Agreement shall remain in full force and effect according to its terms and conditions. All terms used in this Amendment shall have the meanings attributed to them in the Agreement. This Amendment embodies the entire understanding between the parties with respect to the subject matter of this Amendment and supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. In the event there is a conflict between the terms and conditions of the Subscriber Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall control.
 - From May 1, 2011 through April 30, 2012 ("Period 2"), the Period 2 Monthly Guarantee shall be \$1,715.
 - From May 1, 2012 through April 30, 2013 ("Period 3"), the Period 3 Monthly Guarantee shall be \$1,749.
 - From May 1, 2013 through April 30, 2014 ("Period 4"), the Period 4 Monthly Guarantee shall be \$1,784.
 - From May 1, 2014 through April 30, 2015 ("Period 5"), the Period 5 Monthly Guarantee shall be \$1,819.
2. **Term and Termination.** This Amendment, which is subject to approval and execution by West in St. Paul, Minnesota, shall become effective May 1, 2010 and shall continue in effect until April 30, 2015 (the "Term"). Either party may, at its option and upon a minimum of 30 days prior written notice to the other party, terminate this Amendment with such termination effective on the first day of the month following such 30 days. The parties agree to enter into good faith negotiations, regarding the terms and conditions of this Amendment, if either party deems there is a material change in Subscriber's organizational structure, including, but not limited to mergers, acquisitions, significant increase in the number of attorneys, owners, partners, associates, staff attorneys or accounting professionals, divestitures or downsizing. In the event Subscriber does not execute a superseding amendment at least 15 days prior to the end of the Term, West shall bill Subscriber for its Westlaw usage, at then-current Schedule A Plan 2 Government Service rates effective on the first day following the end of the Term, continuing thereafter until a superseding Amendment is executed by the parties unless terminated by either party.
3. **Special Offer.**
 - 3.1 For each month during the Term, Subscriber shall guarantee fixed monthly Westlaw Charges, regardless of actual Westlaw usage, for Subscriber's Westlaw access ("Monthly Guarantee") as set forth below:
 - From May 1, 2010 through April 30, 2011 ("Period 1"), the Period 1 Monthly Guarantee shall be \$1,682.
 - 3.2 Except as provided in paragraph 3.3 herein, all charges associated with the use of the following databases, Features and services shall be included in the Monthly Guarantee ("Included Charges"):
 - Federal Case Law & Judicial Materials, Statutes & Legislative Materials, Administrative Law & Regulations
 - State Case Law & Judicial Materials, Statutes & Legislative Materials, Administrative Law & Regulations
 - Selected Practice-Area Materials
 - Legal Texts, Periodicals and Miscellaneous Materials
 - Law Reviews & Journals
 - Online Citation Checking (including KeyCite)
 - Offline Transmission
 - Alert Services (WestClip and KeyCite Alert)
 - Offline Automated Citation Checking (via WESTCheck and including QuoteRight)
 - ALR Databases
 - Americans with Disabilities Act Library Databases
 - Municipal Practitioner Library Databases
 - ResultsPlus Library Databases
 - All Texts & Periodicals (TP-ALL) Library Database
 - 3.3 All charges associated with the use of the following databases, Features and services (as part of all database classifications) shall NOT be included in the Monthly Guarantee and shall be billed in addition to the Monthly Guarantee at then-current Schedule A Plan 2 rates ("Excluded Charges"):

9. **Record Retention.** West agrees to retain all records relating to the Subscriber Agreement pursuant to A.R.S. § 35-214, as amended from time to time. West agrees to make those records available at all reasonable times for inspection and audit by Subscriber during the term of this Subscriber Agreement and for a period of five (5) years after the completion of the term or any renewal term. The records shall be provided by West to the Tempe City Attorney's Office, Civil Division, Tempe, Arizona, or to such other address as Subscriber designates, upon reasonable request to West.
10. **Default and Remedies.** The occurrence of any or more of the following events shall constitute a material breach of and default under the Amendment:
- (a) Any material failure by West to pay funds or furnish materials and/or goods that fail to conform to any requirement of this Amendment; provided that upon written notice of the material failure, West does not cure this Default within thirty (30) days;
 - (b) Any failure by West to observe, perform or undertake any provision, covenant or condition of this Agreement to be observed or performed by West herein, including but not limited to failing to submit any report required herein, provided that West does not cure this Default within thirty (30) days. Upon and during the continuance of an event of default, Subscriber, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to West, may do the following:
 - i. Terminate the Amendment; and/or,
 - ii. Pursue and/or reserve any and all rights for claims to damages for breach or default of the Amendment.
11. **Governing Law.** This Amendment shall be governed and construed by the laws of the State of Arizona. Any litigation between the parties pursuant to this Amendment shall be subject to and initiated in Maricopa County, Arizona.
12. **Indemnity.** To the fullest extent permitted by law, West shall defend, indemnify and hold harmless the Subscriber, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of West, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services West may be legally liable in the performance of or any breach of this Amendment.
13. **Conflicts of Interest.** No officer or employee of either party shall have any direct or indirect interest in this Amendment, nor participate in any decision relating to the Amendment, that is prohibited by law.
14. **Nonliability of Subscriber Officials and Employees.** No official, employee, or representative of Subscriber shall be personally liable to any party, or to any successor in interest to any party, in the event of any breach or default by Subscriber or for any amount which may become due, or with respect to any obligation of Subscriber or otherwise under the terms of this Amendment or related to this Amendment.
15. **No Partnership.** This Amendment and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.
16. **Non-Waiver of Liability.** The Subscriber as a public entity supported by public funds, may not waive any lawful or legitimate right to recover monies lawfully due. West acknowledges and agrees that it shall not demand any limitation on the part of Subscriber to limit or waive any right the Subscriber may have in law or in equity, to recover damages in any applicable jurisdiction.
17. **Insurance.** Prior to commencing any work or services under this Amendment, West shall provide Subscriber with Certificate(s) of Insurance, or formal endorsements as required by this Amendment, issued by West's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, Subscriber shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Amendment. If any of the cited policies expire during the life of this Amendment, West shall forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:
- i. Subscriber City of Tempe, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
 - ii. Commercial General Liability,
 - iii. Excess Liability-Follow Form to underlying insurance as required.
- (b) West's insurance shall be primary insurance as respects performance of the Amendment.
 - (c) All policies, except professional liability insurance waive rights of recovery including subrogation, against Subscriber, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by West under the Amendment.
 - (d) Certificate shall cite thirty (30) day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the

company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

- (e) Commercial General Liability. West shall maintain occurrence form commercial general liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 products and complete operations annual aggregate, and a \$2,000,000 general aggregate limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be follow form equal or broader in coverage scope than underlying insurance.

- (f) Professional Liability. West shall maintain professional liability insurance covering errors and omissions arising out of the work or services performed by West, or anyone employed by West, or anyone for whose acts, mistakes, errors and omissions West is legally liable, with a minimum liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. However, at any time Subscriber may require higher limits in its sole discretion, and West agrees to accept same.

- (g) Workers' Compensation Insurance. West shall maintain workers compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of West's employees engaged in the performance of work or services under this Amendment and shall also maintain employers liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limits.

18. Licenses and Permits. West shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by West, at its sole expense.

19. No Assignment. No right or interest in the Amendment shall be assigned by West and no delegation of any duty of West shall be made without prior written permission of the City, except that West shall be able to assign to another Thomson Reuters affiliate without permission.

20. Notices. All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder, shall be in writing and shall be hand delivered or sent by first class United States mail, postage prepaid, addressed to the party or parties to receive such notice as follows:

If intended for the City, to:

TEMPE CITY ATTORNEY'S OFFICE
Attn: Andrew B. Ching
21 E. 6th Street, Suite 201
PO Box 5002
Tempe, Arizona 85280

Notices may be amended by either party from time to time as furnished in writing to the other.

In order for this document to be effective May 1, 2010, West, in St. Paul, Minnesota must be in receipt of an executed copy of this document by or before 5:00 p.m. CDT on April 28, 2010. In the event West is in receipt of an executed copy of this document after 5:00 p.m. CDT on April 28, 2010, the parties agree and notwithstanding anything to the contrary set forth herein, each and every calendar date set forth herein shall be delayed by one (1) calendar month.

West, a Thomson Reuters business

By _____

Title _____

Date _____

City of Tempe - Office of the City Attorney

By (signature) Andrew B. Ching

Name (please print) ANDREW B. CHING

Title CITY ATTORNEY

Date APRIL 27, 2010

Firm Name TEMPE CITY ATTORNEY'S OFFICE

Subscriber's Address 21 E. 6th Street, Ste. 201

TEMPE AZ 85281

Contact Name JUDI MORGAN

Telephone Number 480.360.8779

This offer expires April 25, 2010
JLK-4/6/2010

SPECIAL OFFER AMENDMENT
TO WESTLAW® SUBSCRIBER AGREEMENT

EXHIBIT 1
Westlaw Locations and Password Contacts

☐ All office locations must be listed below. Check here if there is one password contact across all office locations and complete password contact information below. List additional Westlaw password contacts (if applicable) for other office locations.

[illegible]

Special Offer Billing Options

Only applicable to Subscribers with multiple locations and must be completed and returned with the Special Offer Amendment

_____ **Default**

UNLESS OTHERWISE SPECIFIED, THE SUBSCRIBER FIRM/ORGANIZATION WILL RECEIVE ONE COMBINED MONTHLY INVOICE AND A COPY OF EACH PARTICIPATING ACCOUNT'S LOCATION USAGE REPORTS - ALL MAILED TO THE PAYER ACCOUNT OFFICE.

_____ **X**

As Is

Subscriber's current billing arrangement should remain unchanged.

_____ **Alternative # 2**

Each account will be billed separately, each receiving an invoice and a location usage report. Special offer adjustments will be allocated to the individual accounts based on their actual usage charges.

_____ **Alternative # 3**

An invoice and location usage report will be created for each office, allocating special offer adjustments to individual accounts based on their actual usage charges, however each account invoice and associated location usage reports will be independently mailed to the account noted below rather than to the invoiced account location.

Mail to Account: _____

PLEASE NOTE: THESE BILLING ARRANGEMENTS DO NOT AFFECT QUICKVIEW+.